

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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NTT DOCOMO, INC.,

Petitioner,

-against-

ULTRA D.O.O.,

Respondent.
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10 Civ. 3823 (RMB) (JCF)

ORDER

I. Background

By Decision and Order, dated October 12, 2010 (“Order”), the Court granted the petition of NTT DoCoMo, Inc. (“Petitioner”), filed May 10, 2010, to confirm an arbitration award (“Award”) issued in Petitioner’s favor and against Ultra D.O.O. (“Respondent”) by a panel of the International Court of Arbitration on January 26, 2010.* (See Order at 7.) The Court’s Order also awarded “costs and reasonable attorneys’ fees incurred by [Petitioner] in th[e] confirmation proceeding,” and referred the matter to United States Magistrate Judge James C. Francis IV “to determine the amount of costs and attorneys’ fees which should be paid to Petitioner.” (Order at 7 (internal quotation marks omitted).)

On February 7, 2011, Judge Francis issued a thorough report and recommendation (“Report”) recommending that Petitioner “be awarded attorneys’ fees of \$123,585.32 and costs of \$18,503.37, for a total of \$142,088.69.” (Report at 4.) Respondent did not oppose Petitioner’s application. (See Report at 3; Resp.’s Ltr. to Judge Francis, dated Feb. 4, 2011.)

* As described in the Order, the Award requires Respondent to pay Petitioner (1) \$3,086,900 in specific performance with simple interest of 4.25% on \$1,200,000 of that sum from March 31, 2008; 3.25% on \$1,000,000 of that sum from December 31, 2008; and 3.25% on \$886,900 of that sum from December 31, 2009; (2) \$125,000 in arbitration costs; and (3) \$300,000 in other costs and attorneys’ fees incurred by Petitioner during the arbitration. (See Order at 2 (citing Award, dated Jan. 26, 2010, ¶ 94, attached as Ex. A. to Petition, dated May 10, 2010); see also Addendum to Award, dated Mar. 9, 2010, ¶ 5.)

The Report advised that, “[p]ursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and 6(d) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from this date to file written objections.” (Report at 4.) To date, neither party has filed objections to the Report.

For the reasons set forth below, the Report is adopted in its entirety.

II. Legal Standard

The Court may adopt those portions of a magistrate judge’s report to which no objections have been made and which are not clearly erroneous. See Fed. R. Civ. P. 72(b); DeLeon v. Strack, 234 F.3d 84, 86–87 (2d Cir. 2000); Santana v. United States, 476 F. Supp. 2d 300, 302 (S.D.N.Y. 2007). A district judge “may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge.” 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b); DeLeon, 234 F.3d at 86–87.

III. Analysis

The facts as set forth in the Report are incorporated herein by reference unless otherwise noted.

Having conducted a review of the Report and applicable legal authorities, the Court finds that the Report is not facially erroneous and is in conformity with the law. See Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991).

Judge Francis, noting that “[Respondent] does not oppose [Petitioner’s] fee application,” properly concluded that “[Petitioner] should be awarded fees and expenses in the amounts requested” because “[t]he records submitted by [Petitioner’s counsel] are detailed, . . . the hours billed appear to be commensurate with the work performed and the needs of the case,” and “the rates charged are consistent with rates charged for similar work in this district.” (Report at 3.)

IV. Conclusion and Order

For the reasons stated herein and therein, the Court adopts the Report in its entirety. The Clerk of the Court is respectfully requested to enter judgment in favor of Petitioner in the following amounts: (1) \$3,086,900 in specific performance, with simple interest of 4.25% on \$1,200,000 of that sum from March 31, 2008; 3.25% on \$1,000,000 of that sum from December 31, 2008; and 3.25% on \$886,900 of that sum from December 31, 2009; (2) \$125,000 in arbitration costs; (3) \$300,000 in other costs and attorneys' fees incurred by Petitioner during the arbitration (as ordered in the Award (see Order at 2; footnote above)); and (4) \$123,585.32 in attorneys' fees and \$18,503.37 in costs incurred by Petitioner during the confirmation proceedings (as recommended in the Report).

The Clerk is further directed to close this case.

Dated: New York, New York
February 22, 2011



RICHARD M. BERMAN, U.S.D.J.